HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.7.2006

CORAM

THE HONOURABLE Mr.JUSTICE S.ASHOK KUMAR

CRIMINAL REVISION CASE NO.711 of 2004 and
Crl.M.P.No.4745 of 2004

...

K.Mahalakshmi ..Petitioner/Complainant

-vs.-

1.State rep.by
The Sub Inspector of Police,
Chidambaram Town Police Station ..Respondent No.1/Respondent
2.Balaraman
3.A.Sambandam ... Respondents Nos.2 & 3/
Impleaded Respondents

Impleaded the 2nd & 3rd Respondents
as per the order of this Court dt.
29.9.2004 in Crl.M.P.Nos.7688 & 9594/2004.

Revision filed under Sections 397 and 401 Cr.P.C. against the order in C.M.P.No.109 of 2004 in C.C.No.454 of 1996 dated 18.3.2004 on the file of the Judicial Magistrate I, Chidambaram.

For petitioner ...Mr.S.Ashok Kumar-Senior Counsel for
Mr.R.Gopinath

For respondents ...Mr.N.Kumanan-GA.(Crl.Side)-R1
Mr.N.Sankaravadivel-R2
Mr.K.Sreedharan-R3

ORDER

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This revision has been filed against the order in C.M.P.No.109 of 2004 in C.C.No.454 of 1996 dated 18.3.2004 on the file of the Judicial Magistrate I, Chidambaram.

2. The brief facts of the case are as follows:- The petitioner is the defacto complainant in Crime No.54 of 1990 on the file of Chidambaram Town Police Station who has filed the final report against seven accused for the offence punishable under Sections 147, 380 and 448 IPC. The occurrence is said to have been taken place on 22.1.1989 at 12.00am for which the complaint has been

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lodged on 20.1.1990 at 8.00pm. A case in Crime No.54 of 1990 was registered at Chidambaram Town Police Station. Originally apart from four named accused, 26 others were also cited as accused. After completion of investigation, police have filed charge sheet against seven persons and the case was taken up for trial as C.C.No.454 of 1996.

3. Now 9 witnesses have been examined and investigating officer alone remains to be examined. At this stage, the petitioner filed a petition before the learned Judicial Magistrate I, Chidambaram for further investigation by the police under Section 173 (8) Cr.P.C. Learned Magistrate dismissed the same on the ground that already several petitions have been filed by the petitioner for the same relief, which have been dismissed by the Magistrate Court as well as by the High Court and at the end of the trial stage, this petition is filed to drag on the proceedings and that a direction has been issued by this court to dispose off the said case giving first priority and also that only the police or the investigating officer could seek permission to further investigate the case. Aggrieved over the said order, this revision has been filed.

4. Mr.S.Ashok Kumar, learned senior counsel appearing for the petitioner would contend that a list of articles were said to have been stolen from the premises of the complainant, out of which only some of them were recovered, even recovered articles were not marked as material objects before the trial court and therefore, the petitioner has filed an application praying for further investigation by the police.

5. Mr.K.Sreedharan, learned counsel appearing for R3 and Mr.N.Sankaravadivel, learned counsel appearing for R2 would contend that this petition is filed by the petitioner only for the purpose of dragging on the case and that the petitioner has been indulging in such practice ever since the case was taken on file, she is filing petitions for the same relief or some other reliefs, so that once the petition is dismissed, she would file revision before this court, get a stay order and thus, the matter is protracted for the past 16 years.

6. Learned counsel appearing for the respondents also produced three orders of this court dated 21.7.1995, 10.2.2000 and 19.3.2003 passed by different judges of this court.

(i) Order in Crl.O.P.No.5861 of 1993 was passed by SHIVAPPA, J. wherein the application filed by the petitioner for further investigation under Section 173(8) Cr.P.C. was dismissed on 21.7.1995 for non prosecution. Against the said order, the petitioner has neither filed SLP before the Supreme Court nor filed any application before this court to set aside the order and to restore the

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application. Thereafter the petitioner has filed an application before the learned trial judge to transfer the case to some other court and it was dismissed in the year 1999.

(ii) Thereafter another petition was filed before this court in Crl.M.P.Nos.580 and 581 of 2000, wherein I.DAVID CHRISTIAN,J. has observed as follows:-

> "The case is also being dragged on not because of the accused but only because of the complainant, who seems not inclined to proceed to the case. There need not be no apprehension in mind of the complainant that she will not get fair trial or justice in the court of the Judicial Magistrate No.1. Chidambaram, where the case is pending. Learned Judicial Magistrate No.1, Chidambaram is directed to take up the trial and dispose of the case as early as possible."

This order was passed on 10.2.2000.

(iii) Thereafter, the same petitioner filed Crl.O.P.No.7203 of 2002 seeking to transfer the case to some other court. But the same was dismissed with a direction by T.V.MASILAMANI,J. to dispose of the case by giving first priority and to report the nature of disposal to this court within six months from the date of receipt of a copy of that order. The said order was passed on 19.9.2003. Once again the petitioner has filed application before the judicial Magistrate for further investigation under Section 173(8) Cr.P.C and when the petition was dismissed, she has approached this court for the same relief, which was already rejected by the order dated 21.7.1995.

7. The attitude of the petitioner in filing repeated petitions before the trial court as well as before this court and when once the petition is dismissed, she had filed petition before this court and obtained stay order till the final disposal of the Crl.O.P.would speak volumes about the intention of the petitioner that she is not interested in the disposal of the case and she wants to protract the proceedings some how or the other. Even more than a century ago, it was commented that "Procrastination is the bane of Indian Litigation." The petitioner wants to justify the same as true even now. When the petitioner's prayer for further investigation was dismissed by this court on 21.7.1995, the petitioner did not file any SLP before the Supreme Court or any petition to restore her petition, which was dismissed for non prosecution. But 9 years later, she has filed similar petition before the Magistrate and the same was dismissed. Again she has come to this court. The attitude of the petitioner is nothing but an abuse of process of law. In this context, some of the judgments leading with abuse of process of law

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could be gone into. They are as follows:-

(i) In the case reported in RAJENDRAN v. USHARANAI (2001-1-L.W. (Crl.)319), it was held that the conduct of the accused, where an application has been filed only in order to drag on the proceedings, by way of abusing the process of court, an application before the trial court, then revision before the Sessions Court and other revision petitions before High court, M.KARPAGAVINAYAGAM, J. has imposed a cost of Rs.2,500/- payable to the respondent, which should be paid within one month from the date of that order.

(ii) In the case reported in THANICKACHALAM & ANOTHER v. STATE (2003(2)MWN (Crl.) 286), V.KANAKARAJ, J. has observed in paragraph 11 as follows:-

> 11. If the exercise of the inherent powers conferred on the High Court is exhausted once, there cannot be a second exercise of the same power for one and the same subject, which has already been exercised and therefore neither the petitioner has the right to file repeated criminal original petitions in spite of the earlier criminal original petition filed by them having already been decided once and for all nor is it necessary on the part of this court to exercise its inherent powers a second time having already passed an order in exercise of the said power conferred by law and therefore, the above criminal original petition filed by the petitioners become only liable to be dismissed as not maintainable and with heavy costs. However, in consideration of the petitioner's age, this court is not of the view to impose costs and hence the following order: In result, the above criminal original petition fails and the same is dismissed as not maintainable."

(iii) In the case reported in PRITI BHOJNAGARWALA v. STATE OF GUJARAT (2003 Crl.L.J.4062), in paragraphs 16 and 17, the Gujarat High Court has held as follows:-

> "16. In view of the above legal position, this present application is not maintainable. It seems that the applicant has abused the process of law by filing this type of application. As per statement of Mr.Sanjanwala made on previous date, he was knowing that this application was not maintainable. In spite of this, the applicant has pursued this matter, further. This is

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nothing but an abuse of process of law by filing this application. In view of the above, this court is of the considered view that this is a fit case in which the applicant should be ordered to pay special costs which can be used for good and benevolent purposes. In view of the matter, this application is devoid of merit and therefore, it is required to be dismissed.

17. For the foregoing reasons, this revision application is dismissed. Applicant is ordered to pay Rs.10,000/- (Rs.Ten thousand only) as costs as a special case and that amount is ordered to be deposited in the Office of High Court Legal Service Committee within one month from the date of this order. Office is directed to revert back this matter to court after one month, if the said amount is not deposited by the applicant pursuant to this order. Necessary orders will be passed when this matter will be placed by Registry again before this court after one month. Rule is discharged accordingly."

8. The facts of the cited cases are similar in nature of this case. When an application for a particular relief has been dismissed, filing another application for the same relief suppressing the earlier dismissal order is a clear abuse of the process of law. An application for further investigation has been filed about 14 years after the occurrence. Therefore, the petitioner is directed to pay a sum of Rs.10,000/- (Rupees ten thousand only) as costs as a special case and that amount is ordered to be deposited in the Office of High Court Legal Service Committee within one month from the date of this order. Office is directed to revert back this matter to this court after one month, if the said amount is not deposited by the applicant pursuant to this order. Necessary orders will be passed when this matter will be placed by Registry again before this court after one month.

9. It is reported that on behalf of the prosecution only one more witness has to be examined. The trial Court Magistrate is directed to complete the trial and dispose of the case within six

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weeks from the date of this order and submit report regarding the disposal of the case to this court by then. With the above directions, this revision petition is dismissed. Consequently, no order is necessary in Crl.M.P.No.4745 of 2004 and the same is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

tsv.

To

1.The Sub Inspector of Police,
Chidambaram Town Police Station
Chidambaram

2.The Judicial Magistrate I, Chidambaram.

3.-do- Through the Chief Judicial Magistrate,
Cuddalore.

4.The Public Prosecutor,
High Court, Madras.

5.The Section Officer,
Crl.Section, High Court, Madras
(Send back take records immediately)

+1cc to Mr.K.V.Sridharan,Advocate Sr 32814
+1cc to Mr.N.Sankaravadivel, Advocate Sr 32734
+1cc to Mr.R.Gopinath, Advocate Sr 32723

SGR (CO)
km/27.7.

Crl.R.C.No.711 of 2004 &
connected Crl.MP.

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